

**MINUTES OF THE  
BOARD OF ADJUSTMENT RECONVENED MEETING  
EILEEN DONDERO FOLEY COUNCIL CHAMBERS  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE  
PORTSMOUTH, NEW HAMPSHIRE**

**7:00 P.M.**

**March 26, 2019  
Reconvened From  
March 19, 2019**

**MEMBERS PRESENT:** Chairman David Rheame, Vice-Chairman Jeremiah Johnson, John Formella, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternates Phyllis Eldridge and Chase Hagaman

**MEMBERS EXCUSED:** None

**ALSO PRESENT:** Peter Stith, Planning Department

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**III. PUBLIC HEARINGS – NEW BUSINESS  
(continued from the March 19, 2019 Meeting)**

5) Case 3-5.

**Petitioners:** Litchfield Portsmouth, LLC, owner, and New England Sporting Goods, LLC/  
Portsmouth Strategic Partners, LLC, applicants

**Property:** 170 West Road

**Assessor Plan** Map 252, Lot 2-14

**District:** Industrial District

**Description:** Sports training facility.

**Requests:** Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:

- a) a special exception under Section 10.440, Use #442 to allow a sports training facility where a health club or similar use is allowed in this district by special exception.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Monica Kiser was present on behalf of the applicant to speak to the petition. She reviewed the petition, noting that they would not need to do interior or exterior renovations to the space. She said they would install a small hockey ice rink and would have 15-30 students at a time who would attend after school or on weekends, and that there was ample parking for the proposed use. She reviewed the criteria and said they would be met.

Minutes Approved 4-16-19.

In response to the Board's questions, Attorney Kiser said the rink would be real and not synthetic and that some type of HVAC equipment would be required and reviewed by the City Inspector. She said the athletes would be middle and high school students who would likely be dropped off and that she didn't anticipate any traffic problems because the activities would begin after most of the area's businesses closed. Related to excess water and drainage needs, she believed the rink would be filled once and then maintained. Chairman Rheume noted that the use called for 39 spaces, which was more than half the total required for the whole building, and he asked whether the other tenants inquired if the use would take up an inordinate amount of parking that would disrupt their clientele. Attorney Kiser said the tenants didn't talk to her but that it would be a shared parking situation, and it was further discussed. She noted that any students for future sports would not add to the number of hockey students because it would be on a seasonal basis.

Chairman Rheume asked if the bathrooms were shared space or dedicated to the applicant, noting that they were small rooms. The leasing broker Andrew Ward rose to speak and said the bathrooms were private and would not be shared with other tenants. He explained that his organization also managed the building and were told that a chiller would be added to the space without affecting the building's exterior. He said the lease did not contemplate venting or related changes and didn't think water was a concern. Chairman Rheume said there would have to be an exhaust that could cause noise concerns. He said the bathrooms seemed too small for athletic use and asked if the applicant would add a changing room or more bathrooms. Attorney Kiser said it hadn't been determined but that one of the rooms could be converted to a changing space.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one rose to speak, and Chairman Rheume closed the public hearing.

### **DECISION OF THE BOARD**

*Vice-Chair Johnson moved to **grant** the variances as presented and advertised. Mr. Mulligan seconded.*

Vice-Chair Johnson said the proposal was an eclectic mix that tended to be in the warehouse category, some office spaces, and athletic recreational uses. He said it was a good area for it and, referencing the Board's comments about noise potential and municipal services overload, he didn't think a small hockey rink would be a burden on the water system. As for plumbing fixtures, he said he preferred to see a floor plan for the intended use but knew that the City would be diligent on how many plumbing fixtures were required and would adequately handle the building permit. He reviewed the special exception criteria, noting that the use was allowed and would pose no hazard to the public or adjacent property on account of potential fire, explosion, release of toxic materials, and so on. He said he assumed that any mechanical equipment would be permitted and inspected, so he saw no increase in hazard to the property. He said granting the special exception would pose no detriment to the property values in the vicinity or change the essential characteristics of any area including residential neighborhoods, businesses, or industrial

districts on account of the location or scale of buildings, other structures, parking areas, accessways, and so on. He noted that the applicant said there would be no exterior change to the building, but if a chiller were involved, there would be some effect on the building. He said he didn't think it was a concern because the area allowed for a little noise due to adjacent warehouse and production buildings. He said granting the special exception would not create a traffic safety hazard or substantial increase in the level of congestion in the vicinity, pointing out that the building had already had an assembly use, which made him feel more comfortable about the traffic flow. He noted that there were two entrances into the parking lot, and that there might be overlapping traffic from two o'clock to five o'clock, but there would be plenty of available parking and that parents would most likely carpool or drop off their children. He said there was a balance between the square footage and the occupant load driven, which was what the parking requirements were based on versus the actual use of the space. He said it wouldn't be the same environment as a concert, which would increase the occupant load and parking count. He said granting the special exception would not place an excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and so on. Aside from the water issue, he said he didn't think any of those items would apply because the space had already been used by a decent amount of people. He said there would be no significant increase in stormwater runoff onto adjacent properties or streets since there were no exterior changes to the building and/or parking lot.

Mr. Mulligan concurred and had nothing to add.

Mr. Parrott noted that the Board had seen a large number of uses of various kinds over the years, and he felt that the proposed use was appropriate for the area. He said that the parking lot use, noise, and so on would be self-correcting because the building was a multi-tenant one with a manager, and anything that might happen would not affect any nearby neighbors. He said it would be just another miscellaneous use in the building, which would suit everyone fine. Chairman Rheume said he was disappointed that some of the issues brought up by the Board weren't addressed more thoroughly in the application but didn't think those items rose to a level that would be a concern. He said he would be more hesitant about approving the project if it were in another area, but there was wide open space behind the property and no other real neighbors.

*The motion passed by unanimous vote, 7-0.*

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Mr. Mulligan recused himself from the petition, and Alternate Eldridge took his voting seat.

6) Case 3-6.

Petitioner: Noele M. Clews (Christopher Clews, Trustee)  
Property: 799 South Street  
Assessor Plan Map 132, Lot 24  
District: General Residence A District  
Description: Subdivide one lot into three lots.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
a) from Section 10.521 to allow 95'± continuous street frontage where 100' is required.

### **SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernie Pelech was present to speak to the petition on behalf of the applicant. He said the applicant wanted to preserve the existing home and landscaping and subdivide two lots. He said the view of the existing home would be kept and that two tastefully-designed residences would be constructed. He said the two new lots would meet all zoning requirements except for the street frontage, and he explained why five additional feet were needed. He noted that the project went before TAC (Technical Advisory Committee) and would return for site plan and subdivision approval. He reviewed the criteria and said they would be met.

Mr. Hagaman asked whether the owner planned to subdivide the property with the intention of building houses on them for sale. Attorney Pelech said the lots would be for sale but the owner wanted to design the homes to be in keeping with the existing home. Mr. Lee asked whether the applicant considered having two new driveways branch off from the center driveway. Attorney Pelech said the existing circular driveway would access Lots 1 and 3 but would dead-end, and the new driveway would go from South Street to the middle lot. Mr. Hagaman asked what size the homes would be. Attorney Pelech said a 2,000 to 2,250 s.f. footprint would be allowed within the building envelope. Mr. Parrott asked whether there was a plan to form a legal entity when the two lots were sold so that one person couldn't sell the main house or demolish it, and the main house would be protected. Attorney Pelech said there had been on discussion pertaining to that. He said the existing home would remain a four-family dwelling.

Chairman Rheume opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Tim Lefebvre of 761 South Street said he was a direct abutter and was in favor of the proposal and respected the applicant's intent to preserve the home and prevent the property from becoming a cul-de-sac with multiple homes. He said his only concern was drainage and thought that a hardscape might make it worse due to runoff.

Andrea Lefebvre of 761 South Street said she was happy to collaborate with the owner. She asked if a restrictive covenant could be placed on the property to keep it intact. Chairman Rheume said there would have to be a legal agreement for the Board to consider it. The applicant Christiana Clews of 79 Haven Road said the goal was to preserve the main house and keep it in the family rather than sell it.

Chairman Rheume noted that the Board received an email and letter from two opposed abutters.

Attorney Pelech said that TAC requested a drainage study and that something would be done to improve the grade differential between the abutter's lot and the driveway.

Ms. Eldridge asked how close the proposed houses would be to the sidewalk, noting that some abutters thought it would change the streetscape. Ms. Clews said the drawing was an approximation to get a sense of how the landscape could be preserved and that the proposed homes were drawn close to the street to maintain the arboretum feel. She said they intended to have deed restrictions in the sale of the properties pertaining to the square footage of the houses.

No one else rose to speak, and Chairman Rheume closed the public hearing.

### **DISCUSSION OF THE BOARD**

Vice-Chair Johnson said it was a small amount of relief requested and that he applauded the applicant for providing infill housing without removing the character of the existing house. He said it would still be an impressive lot if it were subdivided. Chairman Rheume said he couldn't see that five feet would present a feel to the streetscape that would be out of character from the rest of the neighborhood. He said the Planning Board could formalize some type of requirement to ensure that the existing house remained in place and that the site retained its character. He said he didn't think that the two new homes would stand out from the rest of the neighborhood because there were other homes up the street that weren't set back more. He said the proposal seemed modest and that the Planning Department would consider the drainage issues.

### **DECISION OF THE BOARD**

*Mr. McDonell moved to **grant** the variance as presented and advertised, and Mr. Lee seconded.*

Mr. McDonell said that granting the variance would not be contrary to the public interest nor the spirit of the ordinance. He referred to abutters' concerns that the proposal could alter the neighborhood's character, that any house built on the two new lots would be set farther forward than the old house, or that the two new houses would be set too close to the road. He said if the Board considered the existing lot as its own separate neighborhood, it would change the character of the lot, but if it looked at the neighborhood as a whole, they would see that it would not change the character, especially given the nature of the requested variance, which was for the creation of three lots that had a total of almost 300 feet of frontage when 300 feet of frontage would be required for those lots. He also noted that the three lots were bigger than required in the zone, so he saw nothing that would change the character of the neighborhood. He said the drainage issue would be addressed by the Planning Board. He said granting the variance would do substantial justice, noting that he didn't see any harm to other individuals or the general public. He remarked that in a year or so, when some neighbors looked out, they would see something different, but he didn't think that any harm would outweigh any benefit to the applicant. He said he saw nothing that would diminish the value of surrounding properties in any way. He said the hardship was that the lot was huge, with a big house in the center, and that the

applicant needed a very small variance to make the most reasonable use of it -- five feet off of a hundred feet of frontage being required. He did not think that the purpose of the ordinance would preclude the Board from giving that relief. He said the proposed use was a reasonable one, and that putting a few houses on a very large lot would be reasonable.

Mr. Lee concurred and had nothing to add.

Chairman Rheame said he would support the proposal and referred to his previous statements. He said that subdividing the large lot and granting the small relief requested would not result in negative things occurring, like diminution of surrounding property values and so on.

*The vote passed by unanimous vote, 7-0.*

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Mr. Mulligan resumed his voting seat, and Ms. Eldridge returned to alternate status.

7) Case 3-7.

Petitioners: Thirty-Six Ruby Road Trust, Phillip J. Stiles, Trustee  
Property: Thirty-Six Ruby Road  
Assessor Plan: Map 220, Lot 51  
District: Single Residence B District  
Description: Create a buildable residential lot.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
a) from Section 10.521 to allow a lot area and lot area per dwelling of 11,844± s.f. where 15,000 s.f. is required for each.

### **SPEAKING IN FAVOR OF THE PETITION**

Attorney Jack McGee was present to speak to the petition on behalf of the applicant. He stated that Mr. Stiles wanted to sell the property and that the lot was the only one didn't have a house on it, so they needed a waiver from the 15,000-s.f. requirement. He also noted that there was an error on the drawing scale that showed the setbacks to be 2,000 square feet instead of 2,400 square feet. He reviewed the criteria and said they would be met.

Mr. Hagaman asked if the building envelope maintained the proper setbacks and stayed out of the easement. Attorney McGee agreed.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one rose to speak, and Chairman Rheame closed the public hearing.

### **DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the variance as presented and advertised. Mr. Parrott seconded.*

Mr. Mulligan noted that the project was in the SRB zone, where there was almost no other permitted use other than a single-family dwelling, except for a few commercial uses, and that there wasn't much to be done with the property because it was a vacant lot. He said the Board didn't promote vacant lots, so granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said essential character of the neighborhood would not be threatened by having a somewhat substandard-sized lot for a single-family dwelling, noting that the lot was substandard by current zoning but was similar in nature to the size of other lots in the area. He said granting the variance would do substantial justice because if the applicant were denied, he would be left with no use for the lot and the public would not gain from a vacant lot. He said the value of surrounding properties would not be diminished because the new construction would enhance and strengthen values. He said the hardship was that the property was burdened by the utility easement and was a vacant lot, so those were special conditions that distinguished it from other properties in the area and there was no fair and substantial relationship between the purpose of the lot size ordinance and its application to the property. He said the proposed use was reasonable and that all the criteria were met.

Mr. Parrott concurred, noting that five of the eight lots on the block were smaller than the applicant's, so it was consistent with the well-established subdivision., and that a new home would be better than having a vacant lot. Chairman Rheume said that, when the subdivision was created, the power line easement was in the same location and hadn't changed over the years, and that the lot was used successfully with a home on it for many years.

*The motion **passed** by unanimous vote, 7-0.*

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Mr. Mulligan recused himself from the petition, and Alternate Mr. Hagaman assumed his voting seat.

8) Case 3-8.

Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter, owners and Tuck Realty Corporation, applicant, for property located at  
 Property: 3110 Lafayette Road, Lafayette Road, and 65 Ocean Road  
 Assessor Plan Map 292, Lots 151-1, 151-2 and 153  
 District: Single Residence B District  
 Description: Merge lots and construct four story mixed use building containing 30 apartments and professional/medical offices.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
 a) from Section 10.440 to allow professional, business and medical office uses where the uses are not allowed in the district;

- b) from Section 10.533 to allow a front yard setback 27' from the side line and 70' from the centerline of Lafayette Road where 30' from the sideline or 80' from the centerline is the minimum required;
- c) from Section 10.521 to allow a building height of 51'± where 35' for a sloped roof is the maximum allowed; and
- d) from Section 10.521 to allow a lot area per dwelling unit of 2,722± s.f. where 15,000 s.f. per dwelling unit is required.

### **SPEAKING IN FAVOR OF THE PETITION**

Mike Garrepy of Tuck Realty was present on behalf of the applicant. He noted that Attorney Tim Phoenix was due to arrive but that they might have to postpone the petition if he did not.

Chairman Rheaume stated that the petition would be postponed if Attorney Phoenix hadn't arrived after the break. When the Board reconvened, Attorney Phoenix had not arrived.

### **DECISION OF THE BOARD**

*Mr. Parrott moved to **postpone** the petition to the April 16, 2017 meeting. Mr. Lee seconded.*

Mr. Parrott stated that the full team was not present and that there was no sense in doing the petition halfway. Mr. Lee concurred and had nothing to add.

*The motion **passed** by unanimous voice vote, 7-0.*

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### **II. OTHER BUSINESS**

There was no other business.

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### **III. ADJOURNMENT**

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 8:40 p.m.*

Respectfully submitted,

Joann Breault  
BOA Recording Secretary